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Supreme Court, U.S.
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IN THE
SUPREME COURT FOR THE UNITED STATES
OCTOBER TERM, 1986

WINNIE H. WALKER,

Petitioner,

v.

THIELEN MOTORS INCORPORATED
and TED THIELEN, Individually,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Sixth Circuit erred in affirming the judgment of the United States District Court for the Eastern District of Tennessee in dismissing an action for lack of in personam jurisdiction where the defendant by tortious conduct outside the State of Tennessee set in motion a chain of events resulting in personal injury in the State of Tennessee through the shipment of cars in interstate commerce from Florida to Minnesota.

LIST OF ALL PARTIES

PLAINTIFF:

Winnie H. Walker,

DEFENDANTS:

Fred H. Collier
Robert Dumas
Hilda Dumas
Thielen Motors Incorporated
Ted Thielen, Individually

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINIONS DELIVERED IN THE COURT BELOW

Petitioner respectfully prays that a Writ of Certiorari issue to review the action of the United States Court of Appeals for the Sixth Circuit taken February 3, 1987.

On February 3, 1987, the United States Court of Appeals for the Sixth Circuit affirmed without opinion the judgment of the United States District Court for the Eastern District of

Tennessee, Southern Division which dismissed the action for lack of in personam jurisdiction. On October 28, 1985, Plaintiff filed a motion to reconsider which was denied by the District Court on November 8, 1985. None of these decisions is reported. The text of the opinions is set out in the Appendix.

JURISDICTION OF THIS COURT

This Petition is filed within ninety (90) days of the Order of the United States Court of Appeals for the Sixth Circuit entered February 3, 1987. This Court has jurisdiction under 28 U.S.C., Section 2101.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> ..."Nor shall any State deprive any person of life, liberty, or property, without due process of law;"

2. Tennessee Code Annotated Section 20-2-214 (Long-Arm Statute) provides in pertinent part as follows:

> a) Persons who are non-residents of Tennessee and residents of Tennessee who are outside the State and cannot be personally served with process within the State are subject to the

jurisdiction of the courts of this state as to any action or claim for relief arising from:...

...2) Any tortious act or omission within this State;

...6) Any basis not inconsistent with the Constitution of this State or of the United States.

STATEMENT OF THE CASE

This is a petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit which affirmed without decision[1] the decision of the United States District Court for the Eastern District of Tennessee, Southern Division, which dismissed the Complaint for lack of in personam jurisdiction.

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[1] This Court in the past granted a petition for a Writ of Certiorari where the action of the Trial Court was affirmed by the Court of Appeals without opinion. Fortner Enterprises, Inc. v. United States Steel Corporation, 394 U.S. 495, 89 S.Ct. 1252, 22 L. Ed.2d 495 (1969).

This action was commenced on or about April 12, 1984, and arises from a motor vehicle accident which occurred in Tennessee. Jurisdiction of the District Court was proper pursuant to 28 U.S.C. Section 1332 in that the matter in controversy exceeded the sum of $10,000.00 exclusive of interest and costs and was between citizens of different states.

The factual allegations of the Complaint disclose that Ted Thielen, President of Thielen Motors, Inc., a Minnesota car dealer, travelled on several occasions to the State of Florida to purchase used vehicles at public auction.

On one such occasion, he engaged Robert and Hilda Dumas and their driver, Fred Collier, to transport a number of cars he had purchased at auction to Minnesota. The transportation required two trips, thus traversing the State of Tennessee on four occasions. The accident, which was the subject of the suit, occurred on the return portion of the second trip, when plaintiff crashed at night into the unlighted trailer driven by Collier while it was making an illegal u-turn. The Complaint also discloses that Collier was unlicensed and that the Dumases were neither registered nor in compliance with

the requirements of the Interstate Commerce Commission Act, and the regulations promulgated thereunder.

In her Complaint, as finally amended (Appendix, pg. 32), plaintiff alleged, inter alia, (1) that Thielen, Thielen Motors, Inc., Robert and Hilda Dumas, and Collier had entered into a civil conspiracy in the State of Florida to avoid the requirements of the Interstate Commerce Commission Act, Department of Transportation regulations and the laws of several states regulating safety and liability insurance requirements for the interstate

transportion of vehicles in order to achieve a substantial reduction in the cost of transporting cars from Florida to Minnesota, the location of Thielen Motors, Inc.; and, alternatively, (2) defendants Ted Thielen and Thielen Motors, Inc. negligently selected Robert and Hilda Dumas and their agent, Fred Collier, as independent contractors in the transportation of those cars from Florida to Minnesota.

Defendants, Ted Thielen and Thielen Motors, Inc. (hereinafter referred to collectively as defendants) filed a motion to dismiss this action for

lack of in personam jurisdiction on February 13, 1985.[2] On October 18, 1985, the trial court granted defendants' Motion to Dismiss. In dismissing the Complaint, the District Court held as follows:

> The problem with the present case is that the conspiracy, if there was a conspiracy on which plaintiff pins her hopes is not one that arose in the State of Tennessee, but rather was conceived and implemented either in Florida or Minnesota. While it is true that it might have been foreseeable that the tractor-trailer driven by the defendant Collier would pass through the State of Tennessee,

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[2] Service was never obtained upon the remaining defendants, and they were dismissed without prejudice by an Order entered December 10, 1985.

> it is not likely that the defendant's conduct in connection with the forum state are such that he should reasonably anticipated being hailed into Court here". Memorandum Dated October 18, 1985 at pp 6-7.

On October 28, 1985, pursuant to Rules 59 and 60, Federal Rules of Civil Procedure, plaintiff filed a Motion to Reconsider the Order entered by the Court dismissing plaintiff's cause of action for lack of in personam jurisdiction on the grounds that the Court had not considered plaintiff's theory regarding negligent selection of an independent contractor. The Motion to Reconsider was denied by

order of the District Court for the Eastern District of Tennessee on November 18, 1985, the Court holding that "it appears only fortuitous that consequences of that act (negligent selection) occurred in the State of Tennessee." Memorandum Decision Dated November 18, 1985, pg. 2.

Plaintiff filed a timely Notice of Appeal to the United States Court of Appeals for the Sixth Circuit on December 6, 1986. On February 3, 1987, the judgment of the District Court was affirmed upon the opinion of the District Court and without further opinion by the Court of Appeals for the Sixth Circuit.

REASONS FOR GRANTING THE WRIT

A. Although This Court Has Clearly Identified The Standard By Which The Exercise of In Personam Jurisdiction Is To Be Judged, A Clear Methodology For Applying The Standard To A Given Set Of Facts Has Not, But Should Be, Established.

It is respectfully submitted that this Petition for a Writ of Certiorari should be granted for at least two reasons. The first such reason is that this Court in the forty-two years since International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945), has not yet established a clear standard for applying to the

facts of any given case the principles which have been laid down to permit the "degree of predictability that allows potential defendants to structure their primary conduct into some minimum assurance as to where that conduct will and will not render them liable to suit." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L. Ed.2d 490 (1980).

This Court has, of course, established general criteria and principles for judging whether the exercise of jurisdiction meets the strictures of the Due Process Clause.

These criteria started with the requirement the relationship of the defendant to the forum state must be "meaningful." International Shoe Co. v. Washington, supra, 326 U.S. at 319, 66 S.Ct. at 160. The criteria then required that individuals have "fair warning," Shaffer v. Heitner, 433 U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L. Ed.2d 683 (1977), which is accomplished if the defendant has "purposefully directed" his activities to the forum state. Keeton v. Hustler Magazine, Inc., 465 U.S. 770 at 773, 104 S.Ct. 1473 at 1478, 79 L. Ed.2d 790 (1984). For a defendant to have

"purposefully directed" (or purposefully avail under Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L. Ed.2d 1283 (1958)), his contacts with the forum state must not be "random," "fortuitous," or "attenuated." Keeton v. Hustler Mazagine, Inc., 465 U.S. at 2774, 104 S.Ct. at 1478; World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 299, 100 S.Ct. at 568.

The above principles have been established and reiterated. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L. Ed.2d 528 (1985). What has not been as clearly enunciated is a

methodology for applying these criteria to the facts of any case to create the necessary predictability. Several elements of a methodology have been alluded to, but an overall methhodology has not been established. Petitioner recognizes the aversion of this Court to a mechanical test for reviewing the exercise of jurisdiction, International Shoe Co. v. Washington, supra, 326 U.S. at 319, 66 S.Ct. at 159, but it is respectfully submitted that a general methodology to apply the principles of the Due Process Clause to the facts would not necessarily be wooden or mechanical and would serve

the salutory purpose of permitting a defendant to structure his "primary conduct." Principles alone, without a method of application, cannot warn a non-resident defendant tht his actions may subject him to in personam jurisdiction. An example of the difficulty to be experienced without a methodology of application can be found in this Court's most recent decision of Burger King Corp. v. Rudzewicz, supra. In that decision, after stating the principles established under the Due Process Clause, began to apply those principles to the facts. The Court was urged to use as a benchmark the

"foreseeability of causing injury in the forum State," Burger King Corp. v. Rudzewicz, supra, 471 U.S. at _____, 105 S.Ct. at 2183, but the Court rejected that criteria. Instead, the Court chose to utilize a more general criterion without, it is respectfully submitted, the clarity of predictibility, that criterion was whether a defendant should "reasonably anticipate being hailed into Court there." Burger King Corp. v. Rudzewicz, supra, 471 U.S. at _____, 105 S.Ct. at 2183. It is respectfully submitted that such a subjective test begs the question.

In attempting to develop further, however, the definition of when such a potential defendant should so anticipate being hailed into Court, this Court alluded to situations when he should not - such as the unilateral activity of the plaintiff, as in World-Wide Volkswagen Corp. v. Woodson, supra, or of another party or person as in Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 104 S.Ct. 1868, 80 L. Ed.2d 404 (1984). This Court also went on to say that physical presence of the defendant in the forum state was not necessary. Burger King Corp. v. Rudzewicz, supra, 471 U.S.

at 105 S.Ct. at 2184. Finally, after referring to these several criteria to be used in applying due process principles to the facts, this Court held that it was "presumptively reasonable for Rudzewicz to be called to account," in Florida because his conduct "caused foreseeable injuries to the corporation in Florida." Burger King Corp. v. Rudzewicz, supra, 471 U.S. at _____, 105 S.Ct. at 2186. Thus, this Court based its conclusion that jurisdiction was presumptively appropriate on a "benchmark" rejected earlier in the opinion, namely, "the foreseeability of causing injury in another state." Burger

King Corp. v. Rudzewicz, supra, 471 U.S. at _____, 105 S.Ct. at 2183.

In establishing a methodology and adopting base line criteria for the application of due process principles to the facts of any given case, it is respectfully submitted that foreseeability is appropriate for use as a base line principle, but not the foreseeability of whether an injury may occur in the forum state as in World-Wide Volkswagon Corp. v. Woodson, supra. Rather, the foreseeability that is appropriate is the foreseeability of whether injury in the forum state was foreseeable from the

specific conduct of the defendant. This criterion would comport with the due process principle that subjects a defendant to jurisdiction for delivering "products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." World-Wide Volkswagon Corp. v. Woodson, supra, 444 U.S. at 297-298, 100 S.Ct. at 567-568, Burger King v. Rudzewicz, supra, 471 U.S. at _____, 105 S.Ct. at 2182. In addition, in tort cases, such as the case here, the criterion of the foreseeability of the conduct of the defendant causing injury in

the forum state is especially appropriate. Here, the trial court expressly found that it was foreseeable that "the tractor-trailer driven by the defendant Collier would pass through the State of Tennessee and even though the injury occurred in Tennessee as a result of tortious conduct in the State of Florida, the action was dismissed as to the Thielen defendants for lack of in personam jurisdiction. Certainly, jurisdiction would have been appropriate had the Thielen defendants placed a defective product in interstate commerce with the expectation that it would reach the State of Tennessee and

inflict injury there. Jurisdiction should be appropriate, therefore, where, as here, the conduct of the Thielen defendants place an unlicensed driver of a tractor-trailer in interstate commerce totally in violation of the provisions of the Interstate Commerce Commission Act, with it foreseeable that the rig would pass through the State of Tennessee and cause injury there. It is respectfully submitted that for the above reasons the petition should be granted.

B. Review is Also Appropriate in Order To Delineate Further the Boundaries of the Exercise of Jurisdiction In Tort Cases.

Since International Shoe Co. v. Washington, supra, this Court has issued eleven principle decisions on the issue of the exercise of in personam jurisdiction. Only four such decisions addressed the limits of due process in tort areas, and two were libel actions, wherein jurisdiction was appropriately exercised. Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 104 S.Ct. 1473, 79 L. Ed.2d 790 (1984); Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L. Ed.2d 804 (1980). The other two cases were personal injury

actions where the exercise of jurisdiction was not appropriate. World-Wide Volkswagen Corp. v. Woodson, supra, Helicopteros Nacionales de Columbia, S.A. v. Hall, supra. This case, therefore, presents a situation where this Court can further define the boundaries of due process in the tort context.

In the instant case, there is presented a new set of facts involving a personal injury that would permit this Court to place an outer boundary on the exercise of jurisdiction not set in World-Wide Volkswagen Corp. v. Woodson, supra. The holding in World-Wide Volkswagen Corp.

v. Woodson, supra, which denied in personam jurisdiction is different from the instant case because the factor of the foreseeability of the conduct of the non-resident defendant specifically causing injury in the forum state which was missing there has been found by the trial judge here.

By granting this Petition, this Court will have the opportunity to define and elaborate on the boundaries of the exercise of in personam jurisdiction under the Due Process Clause.

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Chattanooga, Tennessee 37402

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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

WINNIE H. WALKER,	*	
	*	
Plaintiff	*	
	*	
vs.	*	CIV-1-84-259
	*	
FRED L. COLLIER, et al.,	*	
	*	
Defendant	*	

AMENDED COMPLAINT

Plaintiff, by her attorneys, for her Amended Complaint, alleges:

1. Plaintiff, Winnie H. Walker, is a resident of Monteagle, Grundy County, Tennessee.

2. Defendants, Fred L Collier, Robert Dumas and Hila Dumas, are residents of the State of Florida and are subject to the jurisdiction of this Court pursuant to T.C.A., Section 20-2-203, 20-2-205 and 20-2-14.

3. Defendant, Thielen Motors, Inc., is a Minnesota corporation with its principal place of business in Rapid Parks, Minnesota and is subject to the jurisdiction of this Court pursuant T.C.A., Section 20-2-214.

4. Defendant, Ted Thielen, is a resident of the State of Minnesota and is subject to the jurisdiction of this Court pursuant to T.C.A., Section 20-2-214.

5. Jurisdiction is this Court and over this matter is proper pursuant to 28 U.S.C., Section 1332 in that the matter in controversy exceeds the sum of $10,000.00, exclusive of interest and costs, and is between citizens of different states.

6. Venue is proper in this Court pursuant to 28 U.S.C., Section 1391(a) as the cause of action arose in

this district in Marion County, Tennessee.

7. Prior to April 14, 1983, Thielen Motors, Inc., purchased used automobiles at two auctions in Florida and Ted Thielen, on behalf of Thielen Motors, Inc., contracted with Robert Dumas to transport the vehicles to Thielen Motors' place of business by means of a semi-tractor and trailer owned by Robert and Hilda M. Dumas. Defendants knew or should have known that the only economical route between the point of purchase and the point of delivery was through the state of Tennessee.

8. In selecting Robert and Hilda M. Dumas as the method of transportation for its vehicles, Thielen Motors, Inc., and Ted Thielen made no investigation as to the qualifications of the Dumases, made no inquiry as to whether they were registered with the Interstate Commerce Commission, made no investigation as to whether they carried liability insurance and did not, in fact, even meet the Dumases before employing them. The only contact between Thielen Motors, Inc., Ted Thielen and Robert Dumas was by telephone prior to the transport of the vehicles.

9. The semi-tractor and trailer of the Dumases was required by law to be subject to the United States Department of Transportation regulations as it was a motor carrier carrying the goods of another in interstate commerce. 49 U.S.C., Section 10102(12) and 10521.

10. On or about April 14, 1983, at approximately 6:55 p.m., Collier was driving the Dumases' semi-tractor and trailer eastwardly on U.S. highway 64, a two lane highway in Marion County, Tennessee near Monteagle, Tennessee. For reasons unknown to plaintiff, Collier, in a negligent and careless manner,

suddenly veered to his right off the highway anad executed a continuous U-turn on the highway causing the semi-tractor and trailer to block the highway for east and west bound traffic. It was dark at the time and although required by law to have safety lights on the trailer, there were no lights on the trailer.

11. Winnie Walker was following the semi-tractor and trailer on Highway 64 at a legal rate of speed. Because of the sudden U-turn made by Collier directly in front of her, Mrs. Walker was unable to avoid colliding with the tractor which was entirely blocking her lane of traffic.

The front end of her car collided with the left side of the trailer, causing her car to be demolished.

12. Winnie Walker's face and head were knocked into the steering wheel of her car, causing her to lose consciousness immediately. She was severely injured by the accident and, in addition to suffering great pain, has incurred and will continue to incur extensive hospital, doctor, medical bills and loss of earnings. She has suffered severe injuries to her eyes and face, causing permanent injury to her eyes and

perrmanent disfigurement of her face, as well as other permanent injuries.

13. Subsequent to the accident, Collier was cited and convicted of failure to yield the right of way, driving on a suspended driver's license and failure to maintain a driver's log book.

14. The accident and the injuries suffered by the plaintiff were proximately caused by one or more of the following negligent and/or intentional acts of defendants:

(a) Failure to yield the right of way, T.C.A., Section 55-8-131;

(b) Operation of a vehicle which failed to comply with safety lighting requirements, 49 C.F.R., Sectiion 393, et seq.;

(c) Failure to abide by regulations concerning the maximum number of hours which the driver may drive and the mandatory driver rest period 49 C.F.R., Section 395, et seq.; and

(d) Making a sudden U-turn in front of plaintiff without any warning of any kind, and in so doing completely obstructing the highway and the lane of traffic in front of plaintiff, T.C.A., Section 55-8-142.

15. Each of the aforementioned negligent and/or intentional acts is a statutory or regulatory violation constituting negligence per se as each was a contributory factor to the accident. The C.F.R. citations have been adopted as the laws of the State of Tennessee pursuant to T.C.A., Section 65-15-113 and Rule 1200-2-1-.25 of the Tennessee Public Service Commission.

16. Defendants were further negligent in at least the following respects:

(a) Failing to keep a lookout;

(b) Failing to keep the vehicle under control;

(c) Operating the vehicle in a manner which under the conditions and circumstances evidence a reckless disregard for the safety of others;

(d) The Dumases employed Collier as a driver of the semi-tractor and trailer when they knew or should have known that Collier's driver's license had been revoked by the State of South Carolina, 49 C.F.R., Section 391, et seq.;

(e) The Dumases failed to

comply with driver safety qualifications requirements imposed upon operators of motor carriers regarding driver safety, expertise and physical health. 49 C.F.R., Section 391, et seq.;

(f) The Dumases failed to comply with vehicle safety requirements and, in particular, safety lighting requirements, 49 C.F.R., Section 393, et seq.;

(g) The Dumases failed to require Collier to keep a log book and to comply with the safety requirements concerning maximum hours of driving time

and mandatory driver rest periods, 49 C.F.R., Section 395, et seq.

COUNT ONE

17. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 as if fully set forth herein.

18. Upon information and belief, Collier, the Dumases, Thielen Motors, Inc., and Ted Thielen entered into a civil conspiracy to avoid the Department of Transportation regulations and laws of several states regulating safety and liability insurance requirements because non-compliance with said laws and

regulations result in the substantial reduction in cost to the Dumases and lower hauling charges to Thielen Motors, Inc. The means of evading the Department of Transportation regulations and state law were at least as follows:

(a) Thielen Motors, Inc. purchased the used automobiles at auction in Florida for resale at its Minnesota place of business.

(b) Ted Thielen, on behalf of Thielen Motors, Inc., contracted with Robert Dumas to transport the automobiles to Minnesota at a rate below that charged by a regulated motor carrier.

(c) The Dumases' were able to reduce their rates by employing an unlicensed driver (Collier), by failing to carry liability insurance as required by Florida law and the Department of Transportation regulations, and by failing to comply with other regulations concerning safe operation of the semi-tractor and trailer.

(d) To avoid detection, a Bill or Bills of Sale were made out on the used automobiles which showed either Robert Dumas or his company, HMD Sales, as the owner of the automobiles such that it would facially appear that Dumas was

transporting his own goods and not those of another and, therefore, be exempt from certain regulations concerning interstate commerce.

(e) Ted Thielen knew of or should have known of and, therefore, participated knowingly in this conspiratorial scheme for the benefit of himself and Thielen Motors, Inc.

19. The above alleged acts of defendants constitute a civil conspiracy under Tennessee law such that liability for negligence of one co-conspirator, while engaged in the conspiracy, is imputed to all conspirators. The

accident occurred during the continuation of the conspiracy. Plaintiff has suffered damages in the amount of at least $500,000.00 for personal injuries and property damage. Plaintiff further avers that she is entitled to an Order of $1,000,000.00 in punitive damages.

COUNT TWO

20. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 as if fully set forth herein.

21. Defendant Thielen Motors, Inc. either knew, or by the exercise of reasonable care should have known that the

Dumases and Collier were unqualified to undertake the transportation of the vehicles. Ted Thielen and Thielen Motors, Inc., therefore, negligently selected the Dumases and Collier to transport the vehicles purchased by Ted Thielen and Thielen Motors, Inc., and placed in motion a series of events which was capable of, and which did, cause great personal injury.

22. The intentional acts as set forth above evidence a reckless disregard for the safety of others such that punitive damages should be imposed.

23. The negligent, reckless, and intentional acts of the defendants were a direct and proximate cause of the accident and damages and injuries suffered by plaintiff.

WHEREFORE, the plaintiff demands judgment in the amount of $500,000.00 compensatory damages and $1,000,000.00 punitive damages, a jury to try this cause, costs and disbursements and such other and further relief as to which she may be entitled.

Respectfully submitted,

THOMAS, MANN & GOSSETT, P.C.

W. Neil Thomas, III

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE SOUTHERN DIVISION

WINNIE H. WALKER,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIV-1-84-259
	*	
FRED L. COLLIER ROBERT DUMAS, HILDA M. DUMAS, THIELEN MOTORS, INC., and TED THIELEN, individually,	*	
	*	
Defendants.	*	

MEMORANDUM

This matter is before the Court on the motion of defendants Thielen

Motors, Inc. and Ted Thielen to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(2) and (6). Jurisdiction of the Court arises under 28 U.S.C. Section 1332. This case involves an automobile accident and claims for injuries arising from the accident which plaintiff alleges occurred during the course of a civil conspiracy of which the above defendants were member.

I. FACTS.

In April of 1983, Thielen Motors, Inc., by and through its

principal, Ted Thielen, purchased used automobiles at auctions in Florida. Thielen contracted with Robert Dumas to transport the vehicles to Minnesota by means of a semi-tractor and trailer owned by Robert and Hilda M. Dumas. During April, 1983, the Dumas' employee, Fred Collier, made two trips to Minnesota to deliver the automobiles.

On April 14, 1983, Collier was driving the Dumas' vehicle on U.S. Highway 64. An accident occurred between the plaintiff's vehicle and the vehicle being driven by Collier. At the time of the accident, Collier was returning from

the second of the two trips to Minnesota. Plaintiff incurred severe injuries in this accident.

Plaintiff alleges that the Dumases were operating the tractor and trailer in violation of Interstate Commerce Commission ("ICC") regulations governing the licensing and operation of tractor-trailers in interstate commerce. A further allegation is that Thielen and Thielen Motors conspired with the other defendants to violate these ICC regulations. Specifically, plaintiff claims that even if Thielen and Thielen Motors had no actual knowledge of the

violations of the ICC regulations, that these defendants should have been on notice of these violations. Plaintiff points to a variety of factors to sustain this claim, including the lack of an ICC identification number on the cab of the truck and the existence of bills of sale showing that ownership in the purchased automobiles was vested in the Dumases and not in Thielen, though Thielen actually purchased and owned the automobiles.

II. PERSONAL JURISDICTION

Plaintiff assets that this Court has personal jurisdiction over these specific defendants by virtue of the

tortious act committed, specifically the automobile accident, during the course of the alleged civil conspiracy involving the defendants. Defendants Thielen and Thielen Motors argue that the Court lacks personal jurisdiction over them because neither Thielen nor Thielen Motors has had sufficient contacts with the State of Tennessee to subject them to the jurisdiction of the Courts of this State. This Court, when jurisdiction is based upon diversity of citizenship, must look to the statutes of the State of Tennessee to ascertain whether this Court has personal jurisdiction over these parties.

Tennessee has a Long-Arm statute which permits the state to reach parties who might not otherwise normally fall within the jurisdiction of the Court. T.C.A. Section 20-2-214 permits the exercise of jurisdiction as to any claim for relief arising from, but not limited to, the following enterprises:

(1) The transaction of any business within the state;

(2) Any tortious actor omission within the state;

(3) The ownership or possession of any interest in property located within this state;

(4) The entrance into any contract of insurance, indemnity, or guaranty covering any person, property, or risk located within this state at the time of contracting;

(5) The entrance into a contract for services to be rendered or for materials to be furnished in this state.

The constitutional measure of whether the Long-Arm statute may properly reach these defendants is the standard of "minimum Contacts." International Shoe Company v. Washington, 326 U.S. 310 (1945). A Court must consider the nature and quality of party's contact with the state in order to determine whether it has

in personam jurisdiction. Southern Machine Company v. Mohasco Industries, Inc., 401 F.2d 374, 380 (6th Cir. 1968). The quality of the contacts are judged in light of whether the exercise of personal jurisdiction will offend traditional notions of fair play and substantial justice. World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286, 292 (1980); see also Shelby Mutual Insurance Company v. Moore, 645 S.W.2d 242, 244 (Tenn. App. 1981). Tennessee in recent years has extended its Long-Arm statute to the full constitutional limit of the minimum contacts standard. Shelby Mutual

Insurance, 645 S.W.2d at 246.[1]

The Sixth Circuit evaluates the exercise of in personam jurisdiction by a three-part test set forth in Mohasco. This test incorporates the minimum contacts standard as well as a "purposefully availing" requirement and a "substantial connection" determination. Mohasco, 401 F.2d 374. The former

---

[1] "Persons who are non-residents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arissing from: .....Any basis not inconsistent with the constitution of this state or of the United States;" T.C.A. Section 20-2-214(a)(6).

requires that the defendant must purposefully avail himself of the "privilege of acting in the forum state or causing a consequence in the forum state." Id. at 381. The substantial connection standard is a delimiting factor which looks to the reasonableness of the exercise of jurisdiction over the defendant. Id. These factors are considered in light of the requirement of due process. Eclipse Lookout Company v. R. W. Taylor Steel Company, No. 1-83-393, slip op. at 3 (E.D. Tenn. February 6, 1984).

Plaintiff's contention is that the existence of a civil conspiracy permits the Court to exercise jurisdiction over co-conspirators who are not present in the state if a tortious act is committed during the course of the conspiracy. See, generally, National Egg Company v. Bank Leumi le-Israel B.M., 504 F.Supp. 305 (N.D. Ga. 1980). Nevertheless, mere membership in a civil conspiracy does not automatically render a member of the conspiracy subject to the jurisdiction of the forum even if other members of the conspiracy are subject to legal process in the forum. In re Arthur

Treacher's Francisee Litigation, 92 F.R.D. 398, 411 (E.D. PA. 1981). More specifically, the mere presence of one co-conspirator within a jurisdiction does not in and of itself create jurisdiction over the other alleged co-conspirators. Mandelkorn v. Patrick, 359 F.Supp. 692, 696 (D. D.C. 1973).

The plaintiff would have the Court exercise jurisdiction over the defendants by virtue of the civil conspiracy which allegedly existed among the defendants. The plaintiff then attempts to utilize the occurrence of a tortious act as a means of anchoring the

personal jurisdiction of this Court over those defendants. Yet, the defendants' actions are by no means indicative of either continuing and substantial activity in the state or a particular foray into the state for the purposes of some transaction or event. See, generally, World-Wide Volkswagen, 444 U.S. at 286. As the Court in World-Wide Volkswagen stated: "In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York

residents, happened to suffer accident while passing through Oklahoma." Id. at 295.

The problem in the present case is that the conspiracy, if there was a conspiracy, on which the plaintiff pins her hopes is not one that arose in the State of Tennessee but, rather, was conceived and implemented either in Florida or Minnesota. While it is true that it might have been foreseeable that the tractor-trailer driven by the defendant Collier would pass through the State of Tennessee, it is not likely other alleged co-conspirators. Mandelkorn v.

Patrick, 359 F.Supp. 692, 696 (D.D.C. 1973).

The plaintiff would have the Court exercise jurisdiction over the defendants by virtue of the civil conspiracy which allegedly existed among the defendants. The plaintiff then attempts to utilize the occurrence of a tortious act as a means of anchoring the personal jurisdiction of this Court over those defendants. Yet, the defendants' actions are by no means indicative of either continuing and substantial activity in the state or a particular foray into the state for the purposes of some

transaction or event. See, generally, World-Wide Volkswagen, 444 U.S. at 286. As the court in World-Wide Volkswagen stated: "In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." Id. at 295.

The problem is the present case is that the conspiracy, if there was a conspiracy, on which the plaintiff pins

her hopes is not one that arose in the State of Tennessee but, rather, was conceived and implemented either in Florida or Minnesota. While it is true that it might have been foreseeable that the tractor-trailer driver by the defendant Collier would pass through the State of Tennessee, it is not likely that the "defendant's conduct in connection with the forum State are such that he should reasonably anticipated being hailed into Court there." Id. at 297. While this Court may exercise jurisdiction over the tort claim, the only relationship of defendants Thielen and Thielen Motors to

the tort claim are that they were allegedly members of a conspiracy which arose outside of the State of Tennessee. This relationship is too tenuous for the exercise of personal jurisdiction. Since, as plaintiff alleges, the co-conspirators are responsible for the tortious acts of a member of the conspiracy, see, e.g., McHendry v. Anderson, 344 S.W.2d 769 (Tenn. Ct. App. 1960), the plaintiff could pursue litigation on the tortious act as part of the conspiracy claim in the forum appropriate for the conspiracy claim.

Personal jurisdiction must be founded upon some connection between the

co-conspirators and the forum state beyond the incidental participation of the co-conspirator in a conspiracy. See Bank Leumi, 504 F.Supp. at 313 and n. 7. In Bank Leumi, the bank was alleged to have had substantial contacts with the state of Georgia, the forum state, in activities unrelated to that particular suit. Furthermore, specific acts involving the overdrafting of checks, acts which should have given notice to a bank on the possibility of being hailed into court, led to a reasonable exercise of personal jurisdiction over the defendant. Id. at 314. On the other hand, the mere

existence of a business relationship is not enough. In re Arthur Treacher's, 92 F.R.D. at 412. As in In re Arthur Treacher's, the defendants here have done nothing to avail themselves of the privilege of conducting activities within this forum. Id. This Court believes that the exercise of personal jurisdiction over the defendants Thielen and Thielen Motors would offend "traditional conception[s] of fair play and substantial justice...," International Shoe, 326 U.S. at 320. This Court does not have personal jurisdiction over Thielen and Thielen Motors. Based on the above, the Court finds it unnecessary

to reach the defendant's assertion on its motion that the complaint fails to state a claim for which relief can be granted.

An appropriate order will enter.

R. Allan Edgar
United States District Judge

Dated October 18, 1985

Walker.Brf 1014 043087

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE SOUTHERN DIVISION

WINNIE H. WALKER,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIV-1-84-259
	*	
FRED L. COLLIER ROBERT DUMAS, HILDA M. DUMAS, THIELEN MOTORS, INC., and TED THIELEN, individually,	*	
	*	
Defendants.	*	

ORDER

Upon motion of the plaintiff to amend the complaint pursuant to Federal Rule of Civil Procedure 15, the

plaintiff's motion to include a claim of negligent selection of a transportation agent is hereby GRANTED.

For the reasons stated in the memorandum filed herewith, it is FURTHER ORDERED that plaintiff's motion to reconsider, pursuant to Federal Rules of Civil Procedure 59 and 60, it is hereby DENIED.

IT IS SO ORDERED.

ENTER.

R. Allan Edgar
United States District Judge

Dated November 8, 1985

Walker.Brf 1014 043087

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WINNIE H. WALKER,	*	
	*	
Plaintiff-Appellant,	*	No. 85-6151
	*	
vs.	*	
	*	
THIELEN MOTORS INCORPORATED AND TED THIELEN, INDIVIDUALLY,	*	
	*	
Defendants-Appellees,	*	

ORDER

This cause having come on to be heard upon the record, the briefs and the oral argument of the parties, and upon due consideration thereof,

It is ORDERED that the judgment of the District Court be, and it hereby is, affirmed upon the opinion of the District Court.

ENTERED BY ORDER OF
THE COURT

John P. Hehman, Clerk

Leonard Green,
Chief Deputy

February 3, 1987

Walker.Brf 1014 043087

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was served on the following on the 1st day of May, 1987, by placing a copy in the United States mail postage prepaid:

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